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7 Email: nicole@baykeeper.org

8 Attorneys for Plaintiff  
9 SAN FRANCISCO BAYKEEPER

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 SAN FRANCISCO BAYKEEPER, a non-profit  
14 corporation,

15 Plaintiff,

16 v.

17 MARIN SANITARY SERVICE,

18 Defendant.

Civil No. 3:14-CV-5312

~~PROPOSED~~ SECOND AMENDMENT TO  
CONSENT DECREE

(Federal Water Pollution Control Act, 33  
U.S.C. § 1251 *et seq.*)

1                                   **SECOND AMENDMENT TO CONSENT DECREE**

2           This Second Amendment to Consent Decree (“Second Amendment”) is entered into by  
3 and between San Francisco Baykeeper (“Baykeeper”) and Marin Sanitary Service (“MSS”)  
4 (collectively “Parties) for the purpose of modifying certain terms in the Consent Decree.

5                                   **RECITALS**

6           WHEREAS, to resolve the lawsuit brought by Baykeeper against MSS under the Federal  
7 Water Pollution Control Act, 33 U.S.C. section 1251 *et seq.*, the Parties agreed to resolve the  
8 lawsuit through settlement to avoid the costs and uncertainties of further litigation;

9           WHEREAS, the Court entered the Consent Decree between Baykeeper and MSS as an  
10 Order of the Court on June 24, 2015, *see* Dkt. 19;

11           WHEREAS, the Court entered the First Amendment to Consent Decree between  
12 Baykeeper and MSS as an Order of the Court on September 15, 2017, *see* Dkt. 23;

13           WHEREAS, the First Amendment to Consent Decree was scheduled to terminate on  
14 September 30, 2019;

15           WHEREAS, additional best management practices (BMPs) failed to reduce pollutant  
16 loading for metals at all drainage areas to below Target Levels during the 2018-2019 wet season;

17           WHEREAS, by letter dated August 1, 2019, attached hereto as Exhibit A, Baykeeper  
18 notified MSS pursuant to paragraph 27 of the Consent Decree (“Dispute Resolution”) that a  
19 breach of certain terms of the Consent Decree had occurred;

20           WHEREAS, pursuant to paragraph 1 of the First Amendment to Consent Decree (Dkt.  
21 23), the Consent Decree shall not terminate until Dispute Resolution is completed;

22           WHEREAS, in order to complete Dispute Resolution, the Parties have agreed that MSS  
23 will implement the following BMPs during the 2019-2020 wet season:

- 24                   • MSS will optimize the treatment system at MS-B (sub-drainage area 2B) to target  
25                   metals by October 1, 2019;
- 26                   • MSS will install an additional treatment system optimized to target metals at MS-  
27                   C (sub-drainage area 3A) by October 1, 2019;

- MSS will sample the effluent from the treatment systems at MS-B and MS-C during the 2019-2020 wet season;
- MSS will conduct targeted sampling during the 2019-2020 wet season at MS-B (sub-drainage areas 2A, 2C and 2D) and MS-C (sub-drainage area 3C) to determine each area's specific pollutant contribution;
- If any sampling results from the first two (2) qualified storm events of the 2019-2020 wet season exceed Target Levels, then MSS will consider adding an organoclay polishing filter or other BMPs targeting metals to further optimize the treatment systems at MS-B and MS-C within thirty (30) days of receipt of the laboratory report from the second qualified storm event of the 2019-2020 wet season. WHEREAS, in order to allow MSS time to implement additional BMPs to achieve further pollutant loading reductions, the Parties wish to again extend the term of the Consent Decree.

**NOW THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE PARTIES AND ADJUDGED, ORDERED, AND DECREED BY THE COURT AS FOLLOWS:**

1. Paragraph 34 of the Consent Decree shall be amended as follows: This Second Amendment to Consent Decree shall continue in effect until September 30, 2021 (the "term"), at which time the Second Amendment to Consent Decree, and all obligations under it, shall terminate, unless the Parties are engaged in Dispute Resolution pursuant to Paragraph 27 of the Consent Decree.

2. Paragraph 5.c.iii of the Consent Decree shall be added as follows: MSS shall implement the following additional BMPs during the 2019-2020 wet season:

a. MSS will optimize the treatment system at MS-B (sub-drainage area 2B) to target metals by October 1, 2019;

b. MSS will install an additional treatment system optimized to target metals at MS-C (sub-drainage area 3A) by October 1, 2019;

c. MSS will sample the effluent from the treatment systems at MS-B and MS-C during the 2019-2020 wet season;

1 d. MSS will conduct targeted sampling during the 2019-2020 wet season at  
2 MS-B (sub-drainage areas 2A, 2C and 2D) and MS-C (sub-drainage area 3C) to determine each  
3 area's specific pollutant contribution;

4 e. If any sampling results from the first two (2) qualified storm events of the  
5 2019-2020 wet season exceed Target Levels, then MSS will consider adding an organoclay  
6 polishing filter or other BMPs targeting metals to further optimize the treatment systems at MS-B  
7 and MS-C within thirty (30) days of receipt of the laboratory report from the second qualified  
8 storm event of the 2019-2020 wet season.

9 3. Paragraph 26 of the Consent Decree shall be amended as follows: Compliance  
10 Monitoring Funds: MSS provided Baykeeper a total twelve thousand dollars (\$12,000), four  
11 thousand dollars (\$4,000) annually, for costs and fees associated with monitoring MSS's  
12 compliance with the Consent Decree through the original termination date of this agreement.  
13 The total compliance monitoring fund payment was paid to Baykeeper within thirty (30) days  
14 after the original Effective Date. MSS provided Baykeeper an additional five thousand dollars  
15 (\$5,000) annually for costs and fees associated with monitoring MSS's compliance with the First  
16 Amendment to Consent Decree through the extended termination date of this agreement, or ten  
17 thousand dollars (\$10,000) total. MSS shall provide an additional eight thousand dollars  
18 (\$8,000) per year for costs and fees associated with monitoring MSS's compliance with the  
19 Second Amendment to Consent Decree through the extended termination date of this agreement,  
20 totaling sixteen thousand dollars (\$16,000). MSS shall make the additional compliance  
21 monitoring fund payment payable to Baykeeper within thirty (30) days after the Effective Date of  
22 the Second Amendment to Consent Decree.

23 4. Paragraph 47 of the Consent Decree shall be amended to replace Ron Piombo with  
24 Nicholas Minton, email: nicholas.minton@marinsanitary.com.

25 5. Baykeeper shall submit this Second Amendment to the U.S. Department of Justice  
26 (DOJ) and the U.S. Environmental Protection Agency within three (3) business days of the  
27 Parties' execution of this Second Amendment for agency review consistent with 40 C.F.R. §  
28 135.5. After DOJ has notified the Court or the Parties that it does not object to the Second

1 Amendment or the 45-day agency review period has expired, whichever is earlier, Baykeeper  
2 shall promptly request that the Court enter this Second Amendment.

3 6. The Effective Date of the Second Amendment shall be the date on which DOJ  
4 approves the Second Amendment.

5 7. All other terms and conditions in the Consent Decree not modified by this Second  
6 Amendment shall remain in full force and effect.

7  
8 SAN FRANCISCO BAYKEEPER

9 Date: 10/23/19

10   
11 \_\_\_\_\_  
12 SEJAL CHOKSI-CHUGH  
13 Executive Director

14 MARIN SANITARY SERVICE

15 Date: 22 Oct 19

16   
17 \_\_\_\_\_  
18 PATTY GARBARINO  
19 President

20  
21 APPROVED AND SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_

22  
23 UNITED STATES DISTRICT JUDGE  
24  
25 \_\_\_\_\_  
26  
27  
28

## **EXHIBIT B**



Nicole Sasaki <nicole@baykeeper.org>

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## RE: San Francisco Baykeeper v. Marin Sanitary Service, Case No. 3:14-cv-5312

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Iacangelo, Rachel (ENRD)

Fri, Dec 13, 2019

<Rachel.Iacangelo@usdoj.gov>

at 6:54 AM

To: "nicole@baykeeper.org" <nicole@baykeeper.org>,

"mbrady@bradyvinding.com" <mbrady@bradyvinding.com>

Cc: "Stoller, Stacy (ENRD)" <Stacy.Stoller@usdoj.gov>, "Russell, Jolene (ENRD)" <Jolene.Russell@usdoj.gov>, "Smith, Justin (ENRD)"

<Justin.Smith@usdoj.gov>

Nicole –

On behalf of Attorney Stacy Stoller, copied in this email, thank you for sending the amendment to the settlement agreement in the above-referenced matter. The United States received and reviewed the amendment to the consent decree in the above captioned matter and we have no objection to the amendments, subject to the provisions of the letter that the United States filed with the court on June 16, 2015 (Document #17). Please notify Stacy Stoller if you have any questions.

**Rachel Iacangelo**

*Paralegal*

US Department of Justice

ENRD – Law and Policy Section

Office: 202.307.0124 Mobile: 202.598.6763

[rachel.iacangelo@usdoj.gov](mailto:rachel.iacangelo@usdoj.gov)

----- Forwarded message -----

From: "ENRD, CitizenSuitDocs (ENRD)"

<CENRD1c43ca@enrd.usdoj.gov>

To: Nicole Sasaki <nicole@baykeeper.org>, "Stoller, Stacy (ENRD)"

<SSstoller@enrd.usdoj.gov>, "Russell, Jolene (ENRD)"

<JRussell2@enrd.usdoj.gov>, "ENRD, CitizenSuitDocs (ENRD)"

<CENRD1c43ca@enrd.usdoj.gov>

Cc: Michael Brady <mbrady@bradyvinding.com>

Bcc:

Date: Wed, 13 Nov 2019 18:02:37 +0000

Subject: RE: San Francisco Baykeeper v. Marin Sanitary Service, Case  
No. 3:14-cv-5312

Nicole –

On behalf of Attorney Stacy Stoller, copied in this email, thank you for sending the amendment to the settlement agreement in the above-referenced matter. The United States received and reviewed the amendment to the consent decree in the above captioned matter and we have no objection to the amendments, subject to the provisions of the letter that the United States filed with the court on June 16, 2015 (Document #17). Please notify Stacy Stoller if you have any questions.

**Rachel Iacangelo**



*Paralegal*

US Department of Justice

ENRD – Law and Policy Section

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[rachel.iacangelo@usdoj.gov](mailto:rachel.iacangelo@usdoj.gov)

**From:** Nicole Sasaki <[nicole@baykeeper.org](mailto:nicole@baykeeper.org)>

**Sent:** Friday, October 25, 2019 7:01 PM

**To:** Stoller, Stacy (ENRD) <[SStoller@ENRD.USDOJ.GOV](mailto:SStoller@ENRD.USDOJ.GOV)>; Russell, Jolene (ENRD) <[JRussell2@ENRD.USDOJ.GOV](mailto:JRussell2@ENRD.USDOJ.GOV)>; ENRD, CitizenSuitDocs (ENRD) <[CENRD1c43ca@ENRD.USDOJ.GOV](mailto:CENRD1c43ca@ENRD.USDOJ.GOV)>

**Cc:** Michael Brady <[mbrady@bradyvinding.com](mailto:mbrady@bradyvinding.com)>

**Subject:** San Francisco Baykeeper v. Marin Sanitary Service, Case No. 3:14-cv-5312

Dear Citizen Suit Coordinators,

Please find attached a letter notifying you of the Proposed Second Amendment to Consent Decree between San Francisco Baykeeper and Marin Sanitary Service. Please contact me with any questions.

Hard copy to follow.

Thank you,

Nicole

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**Nicole C. Sasaki**

**Staff Attorney**

**San Francisco Baykeeper**

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Oakland, CA 94612

Office: 510-735-9700 x110

Fax: 510-735-9160

***Protecting San Francisco Bay from pollution since 1989***

[www.baykeeper.org](http://www.baykeeper.org)

@sfbaykeeper

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**RE: San Francisco Baykeeper v. Marin Sanitary Service, Case No. 3:14-cv-5312.eml**  
15K